

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 413 CUTTACK, FRIDAY, MARCH 4, 2005 / FALGUNA 13, 1926

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 14th December 2004

No. 11395-II/1(B)-65/2004-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th October 2004 in Industrial Dispute Case No. 85/1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of the Executive Engineer, Nayagarh Electrical Division, Nayagarh and its workman Shri Prafulla Chandra Mohapatra was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 85 OF 1993

Dated the 15th October 2004

Present :

Shri P. K. Sahoo, O. S. J. S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Executive Engineer, Nayagarh Electrical Division, Nayagarh.	..	First Party—Management
And		
Its workman	..	Second Party—Workman
Shri Prafulla Chandra Mohapatra.		

Appearances :

For the First Party—Management	..	Shri B. C. Bastia, Advocate
For the Second Party—Workman	..	Shri N. C. Satapathy

A W A R D

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 6926(5)-L. E., dated the 31st May 1993 for adjudication and Award.

2. The terms of the reference may briefly be stated as follows :—

“ Whether the termination of services of Shri Prafulla Chandra Mohapatra, N. M. R. worker by the Executive Engineer, Nayagarh Electrical Division, Nayagarh with effect from the 1st February 1988 is legal and/or justified ? If not, what relief he is entitled to ?”

3. The brief facts giving rise to the present case are that workman Prafulla Chandra Mohapatra was engaged as N. M. R. under Electrical Division, Khurda since January 1973 which was subsequently transferred to Nayagarh Electrical Division in the year 1983. Accordingly he continued as such under the Executive Engineer, Nayagarh Electrical Division, Nayagarh (in short the management) up to February 1988. Although he had rendered continuous uninterrupted service for a period of 15 years with much sincerity, devotion and to the utmost satisfaction of the higher authorities, but the management without any rhyme or reason had illegally terminated him from service with effect from the 1st February 1988 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). According to the workman despite his approach, the management turned a deaf ear which compelled him to raise such an Industrial Dispute. While challenging the legality and justifiability of the action of the management in terminating him from service with effect from 1st February 1988, he has now prayed for his reinstatement in service with full back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. While denying the allegations averred by the workman in his statement of claim, the management has categorically pleaded that the workman voluntarily abandoned the job due to hazardous nature of job and low rate of wages. According to the management, the workman was engaged on contingency basis and as and when need was felt his services were taken on casual basis. The workman had never worked for more than 240 days as a regular employee, therefore with regard to the termination of the workman the provisions of Section 25-F of the Act were not attracted and the management was not under obligation to comply with the provisions of Section 25-F of the Act. It is further averred by the management in its written statement that the management had not terminated the services of the workman rather the workman voluntarily left the job and therefore the workman is not entitled for any relief. In the above back grounds the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the termination of the services of Prafulla Chandra Mohapatra, N. M. R. worker by the Executive Engineer, Nayagarh Electrical Division, Nayagarh with effect from the 1st February 1988 is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 and another witness namely Jaya Krushna Pradhan as W. W. 2 and has relied upon the xerox copy of the letter No. 11219, dated the 26th May 1987 marked as Ext. 1. On the otherhand the management has also examined two witnesses namely Dandapani Mohapatra and Braja Kishore Ray as W. W. 1 and 2 respectively and has relied upon the xerox copy of the letter No. 1410, dated the 28th March 1991 of the Executive Engineer, Nayagarh Electrical Division, Nayagarh, addressed to the Superintending Engineer, Electrical Circle, Bhubaneswar marked as Ext. A in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

Workman Prafulla Chandra Mohapatra in his evidence has clearly stated that he was working in Khurda Electrical Division and Nayagarh Electrical Division as N. M. R. since 1973 but he was retrenched during February 1987 and the management while terminating his service had not given any notice or notice pay and retrenchment compensation to him. Although he had prayed the management to consider his case, but to no avail. Rather the management engaged and allowed the junior employees to work after his termination who are still continuing in their employment under the management. He admits in his cross-examination that no appointment letter was issued to him and he did not appear in the interview since there was no such system prevailing by that time. He has categorically stated that during his tenure he was engaged at Nayagarh, Dasapalla, Odagaon and Khandapara. It has been suggested to him by the management that he was not a regular N. M. R. worker and that he had never worked for more than 240 days and that he has voluntarily abandoned the job to which he has replied in the negative. The evidence of the workman (W. W. 1) with regard to the service having been rendered by him in the establishment of the management since 1973 till the date of his termination gets support from the evidence of W. W. 2 Jaya Krushna Pradhan. In his evidence W. W. 2 has categorically stated that by the time the workman has refused employment he was working in Saranakula Section and after such refusal the junior employees namely Lokanath Pradhan, Bhimsen Sethi and Khetrabasi Barik were allowed to continue in their respective job. Although he has been cross-examined by the management at length but nothing material and substantial has been elicited so as to discard his evidence. After going through the evidence already led by the workman absolutely I find no cogent reason to disbelieve the evidence with regard to the service having been rendered by the workman in

the establishment of the management. On the other hand, the perusal of the evidence of W. W. 1 Dandapani Mohapatra and W. W. 2 Braja Kishore Ray clearly emerges that the workman was working as N. M. R. under the management. M. W. 1 in his evidence has categorically stated that in the year 1985 he was working under Saranakul Electrical Section as Junior Engineer and by that time the workman was also working under the said section. It is also in his evidence that the workman after such termination had not made any representation to the management for his reinstatement in service. He admits that neither any charge-sheet has been framed nor any enquiry has been conducted against the workman by the management. W. W. 2 in his evidence has categorically denied his knowledge about the details of the management or the workman under the management. He has also further denied the tenure of service of the workman. During evidence he has duly proved the letter, dated the 28th March 1991 of the Executive Engineer, Nayagarh Electrical Division, Nayagarh, addressed to the Superintending Engineer, Electrical Circle, Bhubaneswar with regard to the representation of the workman for his re-engagement as N. M. R. During his (M. W. 2) cross-examination he has also proved the letter, dated the 26th May 1987 of the Secretary, O. S. E. B., Bhubaneswar addressed to the Superintending Engineer, Electrical Circle, Balasore relating to the rights of the N. M. R. workers for re-engagement who abandoned the employment voluntarily marked as Ext. A already relied upon by the workman. Further M. W. 1 in his evidence clearly admits that he has no knowledge when the workman joined in the establishment of the management and when he was terminated from service. He further admits that the N. M. R. workers became permanent those who has completed 400 working days continuously as per the agreement between the management and the Union and at that time the O. S. E. B. was functioning and the Division was following the guide-lines of O. S. E. B.

8. Both the management and the workman have led evidence in the present case in support of their respective cases. In the light of the above evidence it is now to be considered as to whether the action of the management in terminating the services of the workman with effect from the 1st February 1988 was legal and/or justified. The evidence led by the workman clearly goes to show that he joined in the establishment of the management since 1973 as N. M. R. worker and continued as such till the date of his termination on the 1st February 1988. The fact with regard to the service having been rendered by the workman in the establishment of the management is not disputed rather M. W. 1 in his evidence has categorically stated that while he was working as Junior Engineer at Saranakul Electrical Section in the year 1985 the workman was also working there. The management in its written statement has also clearly admitted that the workman was engaged under Nayagarh Electrical Division during 1986 but he had not disclosed about his engagement under the Khurda Electrical Division prior to his joining at Nayagarh Electrical Division. The workman in his statement of claim as well as in his evidence has categorically stated that he was engaged as N. M. R. under Khurda Electrical Division since January, 1973 which was subsequently transferred to Nayagarh in the year 1983 where he continued as N. M. R. under the management till the date of his termination. Besides, the perusal of the letter Ext. A clearly reveals that the workman was working as N. M. R. temporarily under different sections of the management and he was being engaged from time to time depending upon the availability of work but he had not turned up for joining the duty with effect from the 1st February 1988. In the

light of the above evidence tendered by the parties being coupled with proved documents it is clearly evident that the workman was engaged as N. M. R. under the management and he had worked for more than 240 days as a regular employee. The management in this respect has miserably failed to demonstrate that the workman had not worked for more than 240 days in the preceding calendar year and therefore the assertion of the management to the effect that the workman has not completed more than 240 days of working is not correct. Rather it has been clearly proved and established that the workman had rendered continuous uninterrupted service with effect from 1973 till the date of his termination on the 1st February 1988 and the management while terminating the services of the workman had not given any notice or notice pay and retrenchment compensation to him, which in my view, are in complete violation of the mandatory provisions of Section 25-F of the Act,. The learned representative appearing for the workman has drawn my attention to the letter of the Secretary, O. S. E. B., Bhubaneswar, Dated the 26th May 1987 vide Ext. 1 addressed to the Superintending Engineer, Electrical Circle, Balasore wherein the policy with regard to rights of N. M. R. workers for re-engagement who had abandoned the employment voluntarily has been decided. On perusal of the said document, absolutely I find no cogent reason to discard the above document. Rather I am of the view that even if the case set up by the management is taken to be correct that the workman has abandoned the employment voluntarily, then also his services can not be terminated in the manner as it has been done without complying with the provisions of Section 25-F of the Act. Law is well settled that compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. Section 25-F of the Act being a beneficial legislation, it has to be strictly complied with and is a mandatory pre-condition. In the present case the condition precedent has not at all been followed by the management while terminating the service of the workman. He was not given any notice or notice pay in lieu of notice or retrenchment compensation. So, I am of the view that the termination is void *ab initio*. The Hon'ble Apex Court in the matter of Karnatak State Road Transport Corporation Vrs. M. Boraish reported in AIR 1983 Supreme Court 1320, Gammon India Ltd. Vrs. Niranjana Das reported in 1984 (48) FLR 319 and workmen Vrs. Food Corporation of India reported in AIR 1985 Supreme Court 670 has consistently taken the view that "The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*".

9. On careful scrutiny and analysis of the evidence available on record and the documents already relied upon by the parties and keeping in view the settled position of law, I am of the view that the action of the management in terminating the services of the workman with effect from the 1st February 1988 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

10. The schedule of reference clearly indicates that the workman has been terminated from service with effect from the 1st February 1988 and in the mean time 16 years have been elapsed. Nowhere it has been proved by the management that the workman has been gainfully employed elsewhere with effect from the date of his termination. In such premises, the workman is entitled to be reinstated in service but on the facts and circumstances of the present case, as the workman had not worked with effect from the date of his termination, he is only entitled to a lump sum compensation to the tune of Rs. 6,000 towards back wages. Both the above issues are answered accordingly.

11. Hence it is ordered :

That the termination of services of Shri Prafulla Chandra Mohapatra, N. M. R. worker by the management of Executive Engineer, Nayagarh Electrical Division, Nayagarh with effect from the 1st February 1988 is neither legal nor justified. The workman Shri Mohapatra is entitled to be reinstated in service with a lump sum compensation of Rs. 6,000 (Rupees six thousand only) towards back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
(15-10-2004)
Presiding Officer
Labour Court
Bhubaneswar

P. K. SAHOO
(15-10-2004)
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government